TORTS — LIABILITY OF MAKER OR VENDOR OF CHATTEL TO THIRD PERSONS INJURED BY ITS USE. — The defendant contracted to keep in repair the vans of a mineral water company. This he did so negligently that a van broke, injuring its driver, who brought suit against him in tort. *Held*, that the plaintiff may not recover, as the defendant owes him no duty of care. *Earl* v. *Lubbock*, 21 T. L. R. 71 (Eng., C. A.).

For a discussion of the principles involved, see 6 HARV. L. REV. 261.

TRADE MARKS AND TRADE NAMES — MARKS AND NAMES SUBJECT OF OWNERSHIP — PERSONAL NAMES. — The plaintiff had for years been selling in bottles a cement known as "Van Stan's Stratena Cement." The defendant, Van Stan, in a neighboring place of business, sold cement in similar bottles labelled "Van Stan's Cement," with intent to trade and thereby trading on the plaintiff's reputation. *Held*, that the defendant will be enjoined from using the name "Van Stan's Cement" in labelling and exposing his goods for sale. *Van Stan's Stratena Co.* v. *Van Stan*, 58 Atl. Rep. 1064 (Pa.).

For a discussion of the principles involved, see 18 HARV. L. REV. 56.

TRUSTS — CESTUI'S INTEREST IN THE RES — APPORTIONMENT OF LOSS BETWEEN TENANT FOR LIFE AND REMAINDERMAN. — A fund, held in trust to pay the income to a *cestui* for life, was invested in a mortgage. The interest was irregularly paid, and ultimately the security was realized at a considerable loss. Upon a bill brought by the life tenant for arrears of interest, it became necessary, in apportioning the amount received, to determine whether payments made to him before the loss should be taken into consideration. *Held*, that the proceeds should be divided between principal and interest in the proportion that the original fund bears to the arrears of interest, without reference to any sums received by the *cestui* for life. *In re Atkinson*, 53 W. R. 7 (Eng., Ch. D.).

On the question here raised, the American courts agree with the present decision. *Hagan* v. *Platt*, 48 N. J. Eq. 206; *Parsons* v. *Winslow*, 16 Mass. 361. The English authorities, however, are in conflict. One line of decisions holds that such payments should be added to the net proceeds, and this total sum divided between the two estates in proportion to what each would have received, had there been no loss. *In re Foster*, 45 Ch. D. 629. Other decisions uphold the principal case. *In re Moore*, 54 L. J. Ch. 432. The defect of the former rule is that a life tenant, having rightfully received payments, might by that method of apportionment get nothing, or even be required to refund; but it is clear that such payments, being made in accordance with the trust, cannot be recovered. Logic certainly is with the contrary position, that the loss ought to affect only such claims as are still unsettled at the date thereof. The rule of *In re Foster* should be applied only where the loss occurs after a breach of trust, when it becomes necessary to place the parties as nearly as possible in the position occupied at the time of the default. *Cf. In re Bird*, [1901] 1 Ch. 916.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

THE DOCTRINE OF STARE DECISIS. — The appalling multiplication of our law reports has furnished the text for much discussion of a situation of universally admitted gravity. The latest deliverance on the subject is of an ultra-pessimistic tinge. In a recent number of the Michigan Law Review Mr. Edward B. Whitney comes out squarely with the prophecy that "within the lifetime of men already admitted to the bar" the doctrine of *stare decisis* will have been avowedly abolished, and the Continental method of treatment of judicial decisions substituted therefor. *The Doctrine of Stare Decisis*, by Edward B. Whitney, 3 Mich. L. Rev. 89[1] (Dec., 1904).

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[1] A paper read at the section of Private Law of the Congress of Arts and Science, at St. Louis, September, 1904.

The efficiency of our system of judge-made law depends, the author begins by pointing out, on the thorough familiarization by both counsel and court with all the precedents bearing on the issue, and on the exhaustive discussion of them in argument. Accordingly, as the law grows and precedents multiply, there is required "a greater expenditure of time at four different points — in the preliminary preparation by counsel, in the oral argument, in the court's subsequent examination of the authorities, and in their discussion in the opinion." But such to-day is the press of business both in and out of court that "instead of expending more time all parties expend less." The result, in the more crowded federal and state courts, is already apparent. "It is increasingly common to hear successful practitioners say that they find less attention given now to precedent than formerly." A symptom of the breakdown, it is asserted, is perceivable in a growing tendency of the courts to rely on *dicta* and on general statements of law in text-books and encyclopedias.

The futility of remedies that look merely to the curtailment of opinion-writing is obvious, as Mr. Whitney observes. The suppression of dissenting opinions, the official publication of only the more important decisions, or the omission altogether of written opinions at the court's discretion, — all such remedies are at best mildly palliative, and generally entail "a partial abandonment of the very advantage which we have been taught we possess over other systems of jurisprudence." The only suggestion which seems to the author to offer any promise of practical relief is that of a sort of common law *index expurgatorius*, — a legislative list of decided cases to which the doctrine of *stare decisis* should no longer be applied. But even for this plan no particular enthusiasm is manifested.

As to codification, Mr. Whitney's position is rather interesting. Admitting freely the failure hitherto of all efforts in that direction to reduce the volume of appeals, and seemingly attributing the cause to the ineradicable perversities of human nature, he nevertheless cherishes the faith that when the situation has become sufficiently acute, a great school of codifiers will arise, whose work, with the backing of a united bar, will be forced, ungarbled by amendment, through the recalcitrant legislatures.

CORPORATIONS IN THE DISTRICT OF COLUMBIA. — Has a corporation organized under the provisions of the "Code of Laws for the District of Columbia," if sued in a state court, the right of removal of the case to a federal court? This is the principal question which Mr. Fred Dennett of the District of Columbia Bar attempts to answer in a recent article. *Corporations in the District of Columbia*, 32 Wash. L. Rep. 758 (Nov. 25, 1904). The writer's views are, briefly stated, as follows. As between individuals one of whom is a citizen of the District of Columbia this right of removal to a federal court on the ground of diversity of citizenship does not exist. *Hepburn* v. *Ellzey*, 2 Cranch (U. S.) 445. There can, however, be no such citizenship of a corporation in the District of Columbia as to bring it within the inhibitions laid down in this case, since in the United States a corporation can be created only by a sovereign power, and there is no sovereign power, and therefore no power of creation of corporations, in the District of Columbia. Congress in exercising its constitutional legislative authority over the District of Columbia acts, not in a separate capacity as a local legislature, but as the legislative body of the United States, its enactments being limited in application to the territory established as the seat of government. *Cohens* v. *Virginia*, 6 Wheat. (U. S.) 264, 424. The "Code of Laws for the District of Columbia" is therefore federal legislation, and any corporation organized thereunder is a corporation organized under the laws of the United States. The final conclusion from this is that any suit to which such a corporation is a party necessarily involves a federal question, and on this ground there exists in every case the right of removal to the federal courts.

Whatever may be the logic of the writer's first contention, it does not seem to bear materially upon his conclusion; for, even if a contrary view were adopted